REMARKS

This is a response to the office action of May 9, 2006.

In the office action, the Examiner reviews the prior restriction requirement. Counsel for Applicant confirms that Group I claims were elected, that is claims 1, 5-9 and 18-26.

Claims 1, 7-9, 18, 19, 22, 23 25 and 26 stand rejected under 35 USC §103(a) as being unpatentable over Bigman, in view of Davis. The Patent Office acknowledges that the primary reference, Bigman, does not teach the pellets as having a fragrance. However, the Patent Office notes that Davis teaches an artificial holiday tree including pellets that produce a scent. Then the Patent Office concludes:

> Therefore, as it is clearly taught by Davis et al. that scent producing pellets associated with a tree may provide the benefit of desirable scents associated with the tree or a holiday such as Christmas, it would have been obvious to one of ordinary skill in the art at the time of the present invention to use scent producing pellets as the pellets taught by Bigman. Thus the claimed invention as a whole is *prima facie* obvious over the combined teachings of the prior art.

Office Action, p. 4.

Respectfully, the Patent Office has failed to make out a prima facie case of obviousness. The claim term "trunk" has been misconstrued and the Patent Office fails to proffer a legally sufficient motivation to combine.

First, dealing with the claim term "trunk", the Patent Office does not construe this term. Whatever construction was arrived at for the claim term "trunk", the Patent Office concluded that the tube 16 shown in Figure 1 of Bigman constitutes a tree trunk. That is in error. No reasonable construction of the term "trunk" can be so broad as to encompass the tube 16 through which the snowflake pellets flow in the Bigman disclosure.

The proper construction of "trunk" is: "the main woody axis of a tree." See Exhibit 1 from Yahoo!Education. That is the ordinary meaning of "trunk." It is consistent with Applicant's specification which deals with the trunk of a Christmas tree. Hence, the term "trunk" should be

construed in the context of a tree which forms a part of the claimed subject matter in claim 1, for example. This construction is also consistent and in harmony with how a person of ordinary skill in the art would construe the term "trunk." The real trunk in Bigman is the structure denoted by the numeral 14a in Figure 1. Hence, based on claim construction alone, the rejection of claim 1 is improper because claim 1 requires that the air fragrance mixture move at least through a portion of the trunk of a Christmas tree. In Bigman, the pellets of snowflakes or water drops do not move through the trunk of that tree, but through an adjacent tube.

In addition, respectfully, the proffered motivation to combine Bigman with Davis is unsupported and conclusionary. The Patent Office maintains that it would be obvious to substitute the fragrance pellets in Davis for the snowflake or water drop pellets in Bigman. To do so would destroy the object and purpose of the Bigman device. The Bigman tree is designed to spew out artificial snowflakes or water droplets. If the artificial snowflakes or water drop pellets are substituted with fragrance pellets, then it clearly follows that the Bigman tree will not disperse either snowflake pellets or artificial water drop pellets.

Replacing the snowflake pellets or the water drop pellets of Bigman with fragrance pellets, will not result in the Bigman tree emitting a fragrance. Davis teaches that the fragrance pellets are heated in a container and areas blown over the pellets to generate an air fragrance mixture. The Examiner's modification of Bigman simply substitutes the Davis fragrance pellets for Bigman's snowflake or water drop pellets. In that case, the modified Bigman reference simply spews out or disperses the fragrance pellets. This constitutes an inoperative device and will not satisfy or result in the proffered motivation.

The Patent Office rejects claims 5, 6, and 20 under Section 103 as being unpatentable over Bigman, in view of Davis, in further view of Zins. The claims in question call for at least a portion of the fan to be disposed within the trunk or the artificial tree. The Examiner states:

> It would have been obvious to one of ordinary skill in the art at the time of the claimed invention to position the blower/fan in the

> device taught by Bigman and Davis et al. to place the blower/fan in the trunk to provide the necessary flow of air within the trunk.

Office Action, p. 5.

This motivation, it is respectfully urged, is unsupported and wrong. The position of the Patent Office with respect to claim 1 is that air is moved through the so-called trunk of the Christmas tree. Thus, the results of the proffered motivation are already achieved.

Further, a person of ordinary skill in the art would not be motivated to combine Zins with both Bigman and Davis. Zins teaches a cooling fan in the trunk. The tree in Zins is used to house lighting elements which generate heat, and the fan is used for cooling the interior of the trunk. Davis, on the other hand, heats the fragrance pellets in order that the pellets will give off a fragrance that can be picked up by a system of air. Cooling the Christmas tree or the trunk through which the air passes would be counterproductive and contrary to the teachings of Davis. In Davis, the only reference to teach fragrance pellets, the pellets are heated - not cooled.

The Examiner has rejected claims 21 and 24 under Section 103 as being unpatentable over Bigman in view of Davis, and in further view of the Japanese patent to Hashino. The claims in question call for the trunk to include a plurality of trunk openings through which the air-fragrance mixture moves, and in the case of claim 24, calls for directing the air-fragrance mixture through at least a portion of the trunk and out the branches of the Christmas tree. Neither Bigman nor Davis teach dispensing the air-fragrance mixture from the branches of the Christmas tree. Hashino teaches a decorative air conditioning device that blows cool air conditioned air through a tree and out the branches thereof. This patent does not relate, in any way, to dispersing fragrances, but to the contrary, is simply an air conditioning system that includes a decorative tree component where cool air is dispersed out the branches thereof. Again, as with the prior rejection, providing cool air through the Christmas tree is counterproductive to dispersing an air-fragrance mixture where the fragrance that forms a part

of the mixture is emitted in Davis, for example, by heating the pellets. Cooling the Christmas tree or any portion of the air channels through which the air-fragrance mixture passes will only decrease and inhibit the effectiveness of any modified Bigman device. Neither Bigman nor Hashino has anything to do with dispensing an air- fragrance mixture. Respectfully, the proffered motivation here is conclusionary and not based on any evidence, and as pointed out above, is inconsistent and contrary to the principles involved in generating an air-fragrance mixture from fragrance pellets.

The comments of the Patent Office with respect to the Oath and Declaration are well taken. Counsel for Applicant will submit a new Oath and Declaration in this case or take steps to rectify the concerns of the Patent Office in this case.

Respectfully submitted,

COATS & BENNETT, P.L.L.C.

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Larry L. Coats
Registration No.: 25,620

P.O. Box 5
Raleigh, NC 27602
Telephone: (919) 854-1844
Facsimile: (919) 854-2084